

Remarks

Rejections under 35 U.S.C. § 112, second paragraph

Claim 8 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Applicants respectfully traverse this rejection to the extent that it is applied to the claims as amended.

Claim 8 was amended to clarify that an effective amount of the claimed soap is applied to affected areas to alleviate one or more symptoms of the skin disease or condition. Basis for this amendment is found in the application as originally filed, for example on page 8, lines 1-8, and page 15, lines 1-29.

In view of the amendment to claim 8, the rejection is moot.

Rejection Under 35 U.S.C. § 103

Claims 1-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over RU 2180213 or RU 2185814, in view of Albrecht et al. (2006/0121807). Applicants respectfully traverse this rejection.

Legal Standard

The starting point for an obviousness determination must be the Supreme Court's decision in *KSR v. Teleflex*, 550 U.S. 398 (2007), which refocuses the determination of whether a claimed invention is obvious back to the process the Court had defined in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966). There, the Court had held that the obviousness

AMENDMENT AND RESPONSE TO OFFICE ACTION

determination should address four factors, all of which must be considered, though not in any prescribed order: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) any secondary considerations suggesting nonobviousness, such as commercial success, failure of others, and long felt but unmet need. *Id.* The Court cautioned that the fact finder should be careful about reading the teachings of the invention at issue into the prior art, to avoid applying inappropriate hindsight, *ex post* reasoning. *Id.* at 36.

Analysis

Albrecht et al. does not qualify as prior art.

As an initial matter, Applicants point out that *Albrecht et al.* does not qualify as prior art. *Albrecht et al.* is a US national phase application based on PCT/EP2003/07728 (which was filed and published in the German language). The PCT application has a priority date before the priority date of the present application, but was published in German after the priority date of the present application. *Albrecht et al.* is not available under 35 U.S.C. § 102(e) because the international application was not published in English. Furthermore, *Albrecht et al.* is not available under 35 U.S.C § 102 (a) because the present application has an earlier priority date. Because *Albrecht et al.* is not available as prior art, the rejection should be withdrawn.

One of ordinary skill in the art would not be motivated to modify RU 2180213 or RU 2185814 with the teachings of Albrecht et al.

RU 2180213 or RU 2185814 rely on the cathartic properties of fresh sapropel in cosmetic compositions. The products disclosed in these patents are not saponified (i.e., they are not soaps), but glycerides and stearates are used, probably to homogenize the other ingredients. Basically, the two Russian patents disclose mud packs, not soaps. Claims 1-9 are directed to soap or a method of using a soap containing glycerine and sapropel.

Previous soaps had the glycerine by-product of saponification removed. However, an important aspect of the claimed subject matter is that the glycerine byproduct of saponification is not removed, but remains integrated within soap. Modern soaps, which do not include glycerine, are hydrophilic and take moisture out of the skin.

Applicants have discovered that the inclusion of sapropel, along with maintaining the glycerine from the saponification, has two general properties, namely mild abrasion and metal ion capture. Consequently, and as evidenced by the discussion in the present application, the claimed soap has been found to reduce the symptoms of skin diseases.

Even if Albrecht *et al.* qualified as prior art, which for the above reasons it is respectfully submitted that it is not, Albrecht *et al.* fails to disclose or suggest to one of ordinary skill in the art that combining sapropel and glycerine in a soap would provide a soap with desirable properties for treating skin disorders. Indeed, it was routine in the art to remove glycerine from soaps. Albrecht *et al.* refers generally to glycerine as being one of any number of different

AMENDMENT AND RESPONSE TO OFFICE ACTION

ingredients, i.e., it is not identified as possessing particularly beneficial properties for treating skin disorders.

RU 2180213 and RU 2185814 disclose mud packs comprising sapropel. All that the Russian documents provide to the art is that sapropel is known in a cosmetic formulation. There is absolutely no motivation in any of the cited art for a person of ordinary skill in the art to combine sapropel with glycerine in soap. Accordingly, the rejection should be withdrawn.

Allowance of claims 1-9 is respectfully solicited.

Respectfully submitted,

/Charles Vorndran, Ph.D., J.D./
Charles Vorndran, Ph.D., J.D.
Reg. No. 45,315

Date: February 4, 2010

PABST PATENT GROUP LLP
1545 Peachtree Street, NE
Suite 320
Atlanta, Georgia 30309
(404) 879-2153
(404) 879-2160 (Facsimile)